HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 998 (S/S) 2006

Vinod Kumar S/o Sri Devi Dutt Joshi,
Assistant Teacher (L.T. Grade),
Government Inter College Berinag,
District Pithoragarh. --Petitioner.

Vs

1. State of Uttaranchal through,
   Secretary Education (Madhyamik) Dehradun,
2. Regional Joint Director of Education,
   Garhwal Mandal Pauri, Pauri Garhwal,
3. District Education Officer, Chamoli. --Respondents.

Sri S.K. Posti, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.K. Posti, learned counsel for the petitioner and learned Standing Counsel for the respondents.

Submission of the learned counsel for the petitioner is that in pursuance of the advertisement dated 21.10.1997, the petitioner applied for the post of Assistant Teacher (L.T. Grade). The Selection Committee considered the candidature of the petitioner and the name of the petitioner figures in the merit list prepared by the respondent. Thereafter, the petitioner was appointed as Assistant Teacher (Hindi) on 17.10.1998/18.10.1998 in the Govt. Inter College, Kunigad, district Chamoli. On the basis of some complaint all the appointments made by the Joint Director of Education, Garhwal Mandal, Pauri on the post of Assistant Teachers, were cancelled by the Department and after scrutiny, the persons who were rightly selected for the post, were given

reappointment vide order dated 18.06.1999 and the persons who had been provided appointment illegally were left out. The petitioner was re-appointed on the post of Assistant Teacher on 18.06.1988. The petitioner is continuing in the service, but the respondents have withheld the salary of the petitioner from January 1999 to June 1999 and the petitioner has been treated as fresh appointee.

It was further contended that on account of some complaints the Secretary of Education State of U.P. set up inquiry against the Joint Director of Education, Garhwal Mandal Pauri and the Secretary Education, State of Uttaranchal has directed the authority to stop payment of salary of the teachers till the inquiry is completed. But the appointment of the petitioner could not be affected adversely on account of inquiry initiated against the Joint Director of Education.

In the writ petition no. 3160(ss)2001 Harish Chandra Paneru vs. State of Uttaranchal and other, this Court has held that the subsequent appointment of the petitioner itself indicates that the initial appointment of the petitioner was not illegal, therefore one day's break shall be ignored for the purpose of seniority and other benefits in service.

Submission of the learned counsel for the petitioner, in nutshell, is that the respondents may be directed to make payment of salary to the petitioner, which was withheld by them and further the respondents may be directed to ignore the artificial break of one day for the purpose of seniority and other benefits of the service.

Counsel for the petitioner has contended that the petitioner is working continuously in the Institution from the day of his joining and there is no break in the service of the petitioner, as the order of termination was passed on 17.06.1999 and order of fresh appointment was passed on 18.06.1999 which itself indicate that the petitioner was given merely one day's artificial break. It has been further submitted that by withholding the salary of the petitioner from January 1999 to June 1999, the respondents have committed illegality.

For the reasons recorded above, the writ petition is allowed. The respondents are directed to make payment of salary to the petitioner withheld by the respondents for the period since January 1999 to June 1999 and one day's break in the service shall be ignored for the purposes of seniority and other service benefits of the petitioner. No order as to costs.

(M.M. Ghildiyal, J.)

July 21,2006:
NCM: